

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE
P.O. BOX 357
QUINCY, CALIFORNIA 95971

John Lampe
Director of Water Planning
East Bay Municipal Utility District
375 Eleventh Avenue
Oakland, CA 94607-4240

February 23, 1996

Attn: Maria Morrison, Project Engineer

Re: Notice of Preparation of Environmental Impact Report by
East Bay Municipal Utility District; Proposed Folsom South
Canal Connection Project; American River, Lower Mokelumne
River, and Sacramento/San Joaquin/San Francisco Bay Delta.

Dear Mr. Lampe:

The East Bay Municipal Utility District (EBMUD) has determined that an Environmental Impact Report (EIR) should be prepared for the proposed Folsom South Canal Connection Project. EBMUD is seeking scoping comments from the public and other interested parties concerning the issues which should be addressed in the EIR.

The Project - Folsom South Canal Connection Project

EBMUD is proposing to take delivery of water pursuant to its contract with the U.S. Bureau of Reclamation (USBR) by proposing to construct the Folsom South Canal Connection Project. The proposed project may allow EBMUD to take delivery of its USBR contract entitlement of American River water by proposing a new pipeline connection to EBMUD's Mokelumne Aqueducts.

EBMUD currently stores and diverts water from Pardee Reservoir to its service area in portions of Alameda and Contra Costa counties to meet its needs for various uses of water. Pardee Reservoir is located on the lower Mokelumne River. Water is conveyed from Pardee Reservoir through EBMUD's Mokelumne Aqueducts across the Sacramento-San Joaquin Delta Estuary to EBMUD's terminal reservoirs in the Bay Area.

In 1970, EMUD entered onto a 40-year contract with the USBR for an annual delivery of up to 150,000 acre-feet of Central Valley Project (CVP) water from the American River.

**Scoping Comments of the California Sportfishing
Protection Alliance**

Initial Study

1. We have reviewed the Initial Study prepared by EBMUD for the Folsom South Canal Connection Project.

We reference Folsom South Canal Connection Project; California Environmental Quality Act; Initial Study; East Bay Municipal Utility District; Prepared by EDAW, Inc. for East Bay Municipal Utility District; Dated January 22, 1996.

CSPA Complaint Against EMUD - Lower Mokelumne River

2. A number of years ago the California Sportfishing Protection Alliance (CSPA) filed a complaint against EBMUD with the State Water Resources Control Board (SWRCB). The CSPA Complaint claimed that EBMUD's operations of its Pardee and Camanche reservoirs have had adverse impacts to the public trust anadromous fisheries and other public trust resources and assets of the lower Mokelumne River. A hearing was held in 1992. To date the SWRCB has not made a decision on the complaint. However, a decision by the SWRCB on the complaint, including a decision by the Federal Energy Regulatory Commission, will determine the amount of water available for environmental flows for the lower river and the Bay Delta Estuary, and the amount of water available for EBMUD's service area.

Disclose this information in the Draft EIR.

We reference the hearing record for the CSPA v. EBMUD Complaint; SWRCB; 1992.

**Modification of EBMUD's License with the Federal
Energy Regulatory Commission**

3. On January 24, 1989, the CSPA filed a complaint with the Federal Energy Regulatory Commission requesting the FERC to reopen the federal hydroelectric license for the Lower Mokelumne River Project FERC Project No. 2916 because of adverse impacts to the anadromous fisheries of the lower Mokelumne River. FERC reopened the license and prepared an Environmental Impact Statement for the Modification of EBMUD's Lower Mokelumne River Project. To date the FERC has not made a decision concerning the modification of the project. However, this FERC decision will determine how much water flows down the lower Mokelumne to meet the needs of the public trust anadromous fisheries, and how much water is available for the water needs of EBMUD.

Disclose this information in the Draft EIR.

We reference Draft and Final Environmental Impact Statement; Possible Modifications in Project Facilities and Operations at the Lower Mokelumne River Project 2916 for the Conservation and Development of Fish and Wildlife Resources in the Lower Mokelumne River, California, FERC Project 2916-004; Federal Energy Regulatory Commission.

State Law - California Fish and Game Code 5937 - CDFG Fisheries Management Plan for the Lower Mokelumne River

4. The CDFG prepared a fisheries management plan for the lower Mokelumne River. Under oath, representatives of the CDFG testified at the 1992 hearing before the SWRCB that the flow requirements in the CDFG management plan complied with Fish and Game Code 5937. To date the CDFG has not enforced those flow requirements nor has EBMUD complied with those requirements.

At the hearing before the SWRCB in 1992, EBMUD submitted a fisheries management plan for the lower Mokelumne River. In testimony, the CDFG testified that flows in EBMUD's fisheries management plan did not comply with Fish and Game Code 5937.

The proposed Folsom South Canal Connection Project and the operations of EBMUD's Lower Mokelumne River Project are directly connected.

Disclose this information in the Draft EIR and evaluate in the Draft EIR the following cumulative impacts to the public trust fisheries of the Lower Mokelumne River and the Bay Delta Estuary resulting from the proposed project and the operation of the Lower Mokelumne River Project: (a) the cumulative impacts to the public trust resources of the lower Mokelumne River and the Bay Delta Estuary resulting from the operation of the proposed project and the operation of the Lower Mokelumne Project during post project conditions.

We reference the hearing record for the CSPA v. East MUD Complaint; SWRCB; 1992.

Settlement - EBMUD and CDFG

5. It is our understanding EBMUD and CDFG have reached a settlement agreement regarding the amount of water which will flow down the lower Mokelumne River into the Bay Delta Estuary from EBMUD's Lower Mokelumne Project. This settlement has a direct bearing regarding how much water will be available from the lower Mokelumne River for EBMUD's water supply needs and how much water will be piped to EBMUD's Mokelumne Aqueducts from the American River and made available for EBMUD's water supply needs in the East Bay.

Disclose and evaluate in the Draft EIR the amount of water available from EBMUD's Lower Mokelumne River Project to EBMUD's service area, and also the amount of water available from the American River from the proposed Folsom South Canal Connection Project to EBMUD's service area. Include in this analysis the amount of water stored and available from tributaries (inflow) at EBMUD's terminal reservoirs in the East Bay.

Proposed Settlement - EBMUD and U.S. Fish and Wildlife Service

6. It is our understanding EBMUD and the U.S. Fish and Wildlife Service (USFWS) are proposing a settlement regarding the amount of water which will flow down the lower Mokelumne River into the Bay Delta Estuary from EBMUD's Lower Mokelumne River Project. This proposed settlement has a direct bearing regarding how much water will be available from the lower Mokelumne River for EBMUD's water supply needs and how much water will be piped to EBMUD's Mokelumne Aqueducts from the American River and made available for EBMUD's water supply needs in the East Bay.

Disclose in the Draft EIR the amounts of water available for EBMUD's uses in its service area from the following sources: (a) Lower Mokelumne River (Pardee Reservoir - direct diversion and storage); (b) Proposed Folsom South Canal Connection Project; and (c) Stream tributaries to terminal reservoirs in the East Bay (storage of water and direct diversion from stream tributaries). i.e. acre-feet.

Area of Origin Rights - The Counties and Their Entitlements (State Filings)

7. The proposed Folsom South Canal Connection Project and the proposed diversion of American River water will affect the area of origin entitlement rights. Pardee Reservoir and the ongoing storage and diversion of Lower Mokelumne River water has affected the area of origin entitlement rights.

Disclose in the Draft EIR the following:

(a) Disclose the specific counties in the American River watershed who's area of origin entitlement rights will be affected by the proposed Folsom South Canal Connection Project.

(b) Disclose whether the counties in the American River watershed with area of origin entitlement rights have been and/or will be compensated for the use of their area of origin water for the proposed Folsom South Canal Connection Project.

(c) Disclose the specific reductions to water diverted from the American River watershed in the short term and long term for the proposed Folsom South Canal Connection Project as a result of counties in the American River watershed using their full entitlements under their area of origin rights.

(d) Disclose the specific counties in the Mokelumne River watershed who's area of origin rights have been affected by storage and diversions of water from EBMUD's Pardee Reservoir.

(e) Disclose whether the counties with area of origin rights in the Mokelumne River watershed have been compensated for the use of their entitlement water from the operation of EBMUD's Pardee Reservoir.

(f) Disclose whether the USBR and its CVP contract obligations must comply with area of origin rights.

EBMUD's "Drinking Water" Claim

8. EBMUD makes the following statement in the Initial Study: "EBMUD currently diverts water from Pardee Reservoir to meeting the drinking water needs of its customers in portions Alameda and Contra Costa counties (the Service Area). (Our Emphasis) This statement is misleading. Drinking water may be the least amount of water consumed by EBMUD's customers as opposed to the overall use of water consumed.

Disclose the following in the Draft EIR:

(a) The amount of water (acre-feet) used in EBMUD's service area for drinking water purposes from Pardee Reservoir;

(b) The amount of water (acre-feet) used in EBMUD's service area to fill and maintain swimming pools from Pardee Reservoir;

(c) The amount of water (acre-feet) used in EBMUD's service area for exterior watering (lawns, gardens, plants, etc.) from Pardee Reservoir;

(d) The amount of water (acre-feet) used in EBMUD's service area for washing autos, sidewalks, patios, walkways, etc. from Pardee Reservoir;

(e) The amount of water (acre-feet) used in EBMUD's service area for washing clothes, dishes, baths, showers, etc. from Pardee Reservoir;

(f) The amount of water (acre-feet) which will be used in EBMUD's service area for drinking water purposes from the proposed Folsom South Canal Connection Project;

(g) The amount of water (acre-feet) which will be used in EBMUD's service area to fill and maintain swimming pools from the proposed Folsom South Canal Connection Project;

(h) The amount of water (acre-feet) which will be used in EBMUD's service area for exterior watering (lawns, gardens, etc.) from the proposed Folsom South Canal Connection Project;

(i) The amount of water (acre-feet) which will be used in EBMUD's service area for washing autos, sidewalks, patios, walkways, etc. from the proposed Folsom South Canal Connection Project;

(j) The amount of water (acre-feet) which will be used in EBMUD's service area for washing clothes, dishes, baths, showers, etc. from the proposed Folsom South Canal Connection Project.

Growth Inducing Impacts

8. Disclose and evaluate in the Draft EIR the direct and cumulative growth inducing impacts in the EBMUD's service area resulting from the proposed Folsom South Canal Connection Project.

Disclose the cumulative growth inducing impacts to EBMUD's service area resulting from (a) EBMUD's water supply in Pardee Reservoir; (b) EBMUD's water supply from stream tributaries to EBMUD's terminal reservoirs in the East Bay; and (c) EBMUD's water supply from the Folsom South Canal Connection Project.

Disclose and evaluate in the Draft EIR the direct and cumulative growth reducing impacts to the counties with area of origin rights in the American River watershed, and also in the Mokelumne River watershed. (Our Emphasis)

Water Conservation Measures and Water Reclamation Projects

9. Disclose in the Draft EIR the specific conservation measures which will be implemented by EBMUD in its service area to conserve water, and also, which have been implemented to conserve water in EBMUD's service area. Evaluate in the Draft EIR the specific amount of water which will be conserved from specific conservation measures. i.e. acre-feet.

Disclose in the Draft EIR the specific water reclamation projects which will be implemented by EBMUD, and also, which have been implemented by EBMUD to provide additional water in EBMUD's service area. Evaluate in the Draft EIR the specific reclamation projects and the specific amounts of additional water resulting from the specific reclamation projects.

Loss of Water - EBMUD's Service Area

10. Disclose and evaluate in the Draft EIR how much water is being lost in EBMUD's distribution system in its service area as a result of seepage and leakage. i.e. acre-feet. In the event water is being lost in EBMUD's service area, disclose when (milestones) EBMUD proposes to repair the system to prevent the waste of the state's water, and also provide for additional water for EBMUD's service area.

State Water Rights

11. Disclose in the Draft EIR whether it will be necessary for the USBR to file a petition for redirection and change and purpose of use with the State Water Resources Control Board (SWRCB) for additional water to be diverted at Nimbus Dam for the proposed Folsom South Canal Connection Project to meet its contract obligations with the EBMUD.

Also, as part of the proposed Folsom South Canal Connection Project, EBMUD proposes to construct a terminal reservoir to convey water to EBMUD's Mokelumne Aqueducts (a terminus facility adjacent to the Mokelumne Aqueducts).

Disclose in the Draft EIR whether EBMUD will need to obtain the approval of the SWRCB to construct the terminal reservoir, and whether it will be necessary for the USBR to amend its water right permit for the construction and operation of the proposed reservoir. Disclose in the Draft EIR whether it would be necessary for the USBR to prepare a CEQA/NEPA document for the construction and operation of the terminal reservoir.

The Proposed Canal - The Proposed Reservoir

12. As stated beforehand, as part of the proposed project, EBMUD proposes to construct a terminal reservoir in conjunction with the construction of the proposed canal. Disclose and evaluate in the Draft EIR the potential direct, indirect, and cumulative impacts to wildlife species and their habitat, vegetation, vernal pools, wetlands, and other public trust resources resulting from the construction of the reservoir. Include in the Draft EIR the mitigation measures which have been approved by the state and federal agencies for the construction of the proposed reservoir.

The Canal - Stream Tributaries and the Mokelumne River

13. The proposed canal (pipeline) will cross 19 stream tributaries. Some of those tributaries are: Mokelumne River, Cosumnes River, Dry Creek, Bear Creek and Deer Creek. The diversion of stream tributary water into the canal would be the unauthorized use of the state's water in the event EBMUD fails to obtain a water right permit for the use of said tributary water.

In the event EBMUD proposes to divert stream tributaries into the proposed canal, the Draft EIR should disclose and evaluate the potential impacts to the environments of stream tributaries. i.e. fishery and aquatic resources and their habitat, riparian habitat, water quality, wildlife resources and their habitat, threatened and endangered species, and their habitat, etc.

In the event EBMUD does not propose to divert stream tributaries into the proposed canal, as it appears based on the Initial Study, disclose and describe the method of constructing the canal over and/or under stream tributaries. As the result of constructing the proposed canal over and/or under the stream tributaries, the Draft EIR should disclose and evaluate the potential impacts from construction activities to each tributary environment. (fishery and aquatic resources and their habitat, riparian habitat, water quality, wildlife resources and their habitat, wetlands, vernal pools, threatened and endangered species and their habitat, etc.)

U.S. Bureau of Reclamation - NEPA Requirements - Environmental Impact Statement

14. EBMUD claims in the Initial Study that the proposed Folsom South Canal Connection Project will allow EBMUD to take delivery of its USBR contract entitlement for American River water by providing a new pipeline connection with the EBMUD's contract delivery location on the Folsom South Canal at Grant Line Road to the EBMUD's Mokelumne Aqueducts. (Our Emphasis)

EBMUD further claims that in 1970, EBMUD entered into a 40 year contract with the USBR for an annual delivery of up to 150,000 acre-feet of Central Valley Project water. (Our Emphasis)

EBMUD further alleges that the proposed project as described in the Initial Study is not subject to the National Environmental Policy Act based on three (3) conclusion made by EBMUD. (Our Emphasis)

EBMUD claims that the proposed project is not subject to NEPA because: (a) Use of the turn out at Grant Line Road is

consistent with the terms of the existing contract with the USBR, requiring no USBR involvement or discretionary action; (b) no federal land would be impacted; and (c) no federal money would be used to implement the proposed action.

The CSPA disagrees with EBMUD conclusions based on the following information and conclusions:

- (a) Water for the proposed Folsom South Canal Connection Project will be delivered based on a federal contract agreement between a federal agency (USBR) and EBMUD;
- (b) Water for the proposed Folsom South Canal Connection Project will be delivered from Folsom Reservoir (a federal project facility) by the USBR (federal agency);
- (c) Water for the proposed Folsom South Canal Connection Project will be Central Valley Project water (federal water);
- (d) Any USBR Central Valley Project water being delivered to EBMUD is subject to the areas of origin rights. The USBR is required to comply with area of origin rights;
- (e) The existing Folsom South Canal has already been constructed by the USBR using federal money;
- (f) Water for the proposed Folsom South Canal Connection Project from Folsom Reservoir will affect the amount of water available for other Central Valley Project water users and uses, and has the potential to have cumulative impacts to other water users, and other beneficial uses of Central Valley Project water;
- (g) Water for the proposed Folsom South Canal Connection Project from Folsom Reservoir has the potential to adversely impact water levels at Folsom Reservoir resulting in potential adverse impacts to public recreation at Folsom Reservoir during certain water year types;
- (h) The USBR (federal agency) is responsible for maintaining lake levels at Folsom Reservoir (federal facility) for public recreation. EBMUD has no responsibilities in protecting water levels and public recreation at Folsom Reservoir;
- (i) The USBR (federal agency) is responsible for operating and managing Folsom Reservoir in meeting CVP contract obligations such as the USBR/EBMUD contract. The operation and management of Folsom Reservoir by the USBR involves federal money;
- (j) Water for the proposed Folsom South Canal Connection Project from Folsom Reservoir will affect federal lands which are under the authority and responsibility of the USBR at

Folsom Reservoir and within and along the ROW for the existing Folsom South Canal;

(k) The USBR (federal agency) operates Folsom Reservoir in accordance with a water right permit issued by the State Water Resources Control Board. EBMUD does not have a water right permit to operate Folsom Reservoir;

(l) Water for the proposed Folsom South Canal Connection Project from Folsom Reservoir has the potential to adversely impact the 800,000/600,000 acre-feet of Central Valley Project water (CVPIA) made available for the public trust chinook salmon resources restoration in the Central Valley of the state of California.

Based on the above conclusions, a federal Environmental Impact Statement for the proposed Folsom South Canal Connection Project should be prepared as required by the National Environmental Policy Act and its requirements.

Central Valley Project Improvement Act Water - Public Trust Chinook Salmon Resources

15. Water for the proposed Folsom South Canal Connection Project from Folsom Reservoir has the potential to adversely impact the 800,000 acre-feet of Central Valley Project water (CVPIA) made available for the public trust chinook salmon resources of the state of California. The proposed EBMUD diversion of up to 150,000 acre-feet of Central Valley Project water for the proposed project will have up to a 150,000 acre-feet deficit to water stored at CVP Project reservoirs to meet CVPIA water needs for the public trust chinook salmon resources.

Disclose and evaluate in the Draft EIR the cumulative impacts to the public trust chinook salmon resources of the Central Valley resulting from the proposed project and the loss of up to 150,000 acre-feet of water from Folsom Reservoir on the American River, and also the loss of up to 150,000 acre-feet of water flowing into the Bay Delta pool.

Federal Lands

16. Water for the proposed Folsom South Canal Connection Project from Folsom Reservoir will affect federal lands which are under the authority and responsibility of the USBR at Folsom Reservoir, and also the USBR's ROW for the existing Folsom South Canal.

Disclose in the Draft EIR who owns the lands under Folsom Reservoir and the existing Folsom South Canal.

Folsom Reservoir - Water Levels - Public Recreation

17. The USBR (federal agency) is responsible for maintaining lake levels at Folsom Reservoir (federal facility) for public recreation. EBMUD has no responsibilities in protecting water levels and public recreation at Folsom Reservoir. Folsom Lake (Folsom Reservoir) is a "state recreation area".

Disclose in the Draft EIR the responsible agency for managing water levels and public recreation at Folsom Reservoir (Folsom Lake - state recreation area). Evaluate the cumulative impacts to water levels and public recreation at Folsom Reservoir and the Folsom Lake State Recreation Area as a result of the proposed project.

Existing Folsom South Canal

18. The existing Folsom South Canal has already been constructed by the Bureau using federal money. The existing Folsom South Canal provides CVP water to some local water users.

Disclose in the Draft EIR whether the Bureau spent federal money in constructing the existing Folsom South Canal. Disclose in the Draft EIR the local diverters receiving water from the existing canal. Disclose the amount of water used, the season of use, and the purpose of use. Disclose and evaluate the direct and cumulative impacts to local diverters who receive water from the existing South Folsom Canal in conjunction with the proposed project.

Central Valley Project Water - Folsom Reservoir

19. Water for the proposed Folsom South Canal Connection Project from Folsom Reservoir will affect the amount of water available for other Central Valley Project water users and beneficial uses, and has the potential to have cumulative impacts to CVP water contractors, and their beneficial uses of Central Valley Project water.

Disclose in the Draft EIR the names of the downstream CVP contractors who receive CVP water from Folsom Reservoir. Disclose and evaluate in the Draft EIR the amounts of water made available by the USBR during all water year types (wet, normal, low, critically dry and drought conditions) to CVP contractors from Folsom Reservoir during the pre-project period (without the project) and the post-project period (with the proposed project). Disclose and evaluate the cumulative impacts to CVP contractors' beneficial uses of CVP water at their places of use resulting from the proposed project.

Folsom Reservoir - USBR Water Right Permit

20. Disclose in the Draft EIR whether the proposed Folsom South Canal Connection Project, the Mokelumne Aqueducts, and EBMUD's service area are within the places of use under the USBR water right permit for Folsom Reservoir and American River water. In the event the proposed Folsom South Canal Connection Project, the Mokelumne Aqueducts, and EBMUD's service area are not within the places of use under the USBR water right permit for Folsom Reservoir and American River water, disclose whether CVP water can be legally diverted for the proposed project. Disclose in the Draft EIR whether EBMUD's service area has been enlarged since the EBMUD/USBR CVP contract (1970), and in the event the service area has been enlarged, whether the USBR's water right permit was amended to include the enlarged service area.

Disclose in the Draft EIR the amount of money EBMUD will pay the USBR annually for the proposed diversion of up to 150,000 acre-feet of CVP water. i.e. price per acre-foot. Disclose whether a NEPA document was prepared by the USBR for the EBMUD/USBR CVP contract.

Existing Folsom South Canal - Proposed Folsom South Canal Connection Project - Fish Screen

21. The existing Folsom South Canal is not screened to prevent fish from the American River to be entrained and harmed in the canal. The proposed Folsom South Canal Connection Project should be screened at Nimbus Dam to prevent fish from being entrained and harmed in the canal. Disclose whether the existing Folsom South Canal in conjunction with the proposed project at Nimbus Dam will be screened to prevent fish from being entrained and harmed. In the event the existing canal and proposed canal system will not be screened, evaluate the cumulative impacts to fishery resources that will be entrained and harmed in the proposed project. Disclose what agency will pay for the construction and maintenance of a fish screen at Nimbus Dam.

Water Temperatures - Coldwater Capacity of Folsom Reservoir - Anadromous Fisheries in Lower American River below Nimbus Dam

22. The major water quality parameter known to be adversely affecting salmonid production in the lower American River is water temperature. The most important option for improving water temperatures in the lower American River is the protection and improvement of chinook salmon spawning. The reoperation of Folsom Reservoir would likely facilitate the preservation of a larger coldwater pool in Folsom Reservoir throughout the summer so that it may be relied on to meet target chinook salmon adult upstream migration and spawning temperatures of 56 degrees F. in the lower American River

during part of October and all of November. However, the water for proposed Folsom South Canal Connection Project has the potential to adversely impact the amount of coldwater in storage at Folsom Reservoir with a resulting adverse impact on public trust chinook salmon of the lower American River.

The USFWS has advocated that the multitude of Folsom Reservoir waters must be reevaluated within the context of reservoir operations so that adequate cold water storage exists to meet the needs of chinook salmon and steelhead trout throughout the year. i.e. spawning, incubation, rearing, outmigration, etc.

Disclose and evaluate in the Draft EIR the effects to coldwater in storage at Folsom Reservoir as a result of the proposed project. Disclose and evaluate in the Draft EIR the cumulative impacts to chinook salmon and steelhead in the lower American River resulting from reductions in coldwater in storage in Folsom Reservoir during all water year types.

Hodge Decision - The Flows - Anadromous Fisheries

23. In 1972, The Environmental Defense Fund (EDF) filed suit against EBMUD challenging the proposed diversion of water from Nimbus Dam through the Folsom South Canal. A 1990 court decision resulting from this case (known as the Hodge Decision) ordered flows for the protection of salmonid resources in the lower American River.

The USFWS is in the process of developing restoration actions to double natural production of anadromous fish in the Central Valley of California. The lower American River was included in this doubling process.

The Hodge Decision flows were selected to protect aquatic public trust resources in the lower American River, not to double production of anadromous fish in the river. Hence, use of the Hodge Decision flows will not necessarily facilitate doubling production.

Additional information addressing optimal instream flows for salmonids spawning and incubation, rearing, outmigration, and temperature control has been developed by the USFWS subsequent to the Hodge Decision. Much of this information has been developed as part of the retained jurisdiction associated with the EDF et al. vs. EBMUD litigation. The USFWS under the direction of the Anadromous Fish Restoration Program Core Group have developed flow recommendations for the lower American River. The USFWS and Anadromous Fish Restoration Program Core Group flow recommendations were based on new information after the Hodge Decision. Those flow recommendations are greater or less than the Hodge Decision flows, based on four water year types.

The Initial Study for the proposed project cites the Hodge Decision, but limits the flows to that of the Hodge Decision, without any consideration regarding new information concerning flows since the Hodge Decision in 1990. Consequently, the courts and/or the USBR could change the Hodge Decision flows to further protect the public trust chinook salmon and steelhead resources and double the anadromous fisheries production of the lower American River.

The flow recommendations of the USFWS and the Anadromous Fish Restoration Program Core Group are as follows in cfs:

Month	Wet	Normal	Dry/Critical	Critical Relaxation
October	2500	2000	1750	800
Nov-Feb	2500	2000	1750	1200
March-May	4500	3000	2000	1500
June	4500	3000	2000	500
July	2500	2500	1500	500
August	2500	2000	1000	500
Sept	2500	1500	500	500

We reference Working Paper on Restoration Needs; Habitat Restoration Actions to Double Natural Production of Anadromous Fish in the Central Valley of California; Volume 3; Prepared for the U.S. Fish and Wildlife Service under the direction of the Anadromous Fish Restoration Program Core Group; May 1995; At Table 3-Xc-9 on page 3-Xc-42; with supporting new flow information on pages 3-Xc-41 and 3-Xc-42 under: Adult Migration; Spawning Habitat; Redd Dewatering; Redd or Fry Stranding; Rearing Habitat; and Juvenile Outmigration.

The Draft EIR should disclose and evaluate the potential direct, indirect, and cumulative impacts to anadromous fish in the lower American River and the USFWS flow recommendations for doubling anadromous fish reproduction in the lower American River, as shown above, as a result of the flow to be diverted for the proposed project. This evaluation should include direct, indirect, and cumulative impacts to adult migration; spawning habitat; redd dewatering; redd or fry stranding; rearing habitat; and juvenile outmigration to chinook salmon and steelhead.

Alternatives

24. CEQA requires that a range of alternatives are evaluated in the Draft EIR. The Initial Study only evaluates one

alternative. That alternative is the proposed Folsom South Canal Connection Project. CEQA also requires that the "no Project" alternative is evaluated in the Draft EIR.

The CSPA recommends the following alternatives are evaluated in the Draft EIR:

(a) The Conjunction Use Alternative - This alternative would have EBMUD divert water for the proposed project near Freeport in the Sacramento River. It would allow water to flow down the lower American River (for conjunctive benefits for public trust resources of the lower American River) into the Sacramento River for diversion from the Sacramento River. It would provide for greater reliance of CVP contractor water from the American River and also from the Sacramento River. It could protect, in part, area of origin reserved rights from the American River watershed, but would have effects to areas of origin rights in the Sacramento River above the confluence of the American River.

(b) The Diversion of Water From the Delta - This alternative would allow EBMUD to divert water at a selected location in the Delta near EBMUD's service area in accordance with the new water quality standards. This alternative would have conjunctive use benefits from the lower American River to the Bay Delta Estuary, provided the diversion is subject to new water quality standards in the Bay Delta Estuary.

(c) The "No Project" Alternative. This alternative would preclude EBMUD's diversions from the lower American River, preserve area of origin entitlement rights, protection the public trust anadromous fisheries resources of the lower American River, prevent adverse impacts to the present beneficial uses of water by CVP contractors, prevent damages and harm to the environment as a result of constructing the proposed project, and many other public and environmental benefits.

The Draft EIR should disclose and evaluate the direct, indirect, and cumulative impacts to the public trust resources and assets from the above mentioned alternatives.

EBMUD's Updated Water Supply Management Program

25. For the proposed project, the environmental review including the initial study for the proposed project, and the project EIR is tiered to the Updated Water Supply Management Program EIR, a program EIR prepared by EDAW for EBMUD in 1993.

The EBMUD Updated Water Supply Management Program deleted the proposed Folsom South Canal Connection Project. Consequently a revised Water Supply Management Program should be prepared by EBMUD which includes the proposed project.

The Proposed Project is Premature

26. The proposed project is premature. In order to determine the amount of water needed by EBMUD, the following decisions need to be made by state and federal agencies:

(a) Modification (flows) of the Lower Mokelumne River Project FERC No. 2916 by the Federal Energy Regulatory Commission;

(b) A decision by the SWRCB concerning the CSPA v. EBMUD complaint regarding EBMUD operations of their Lower Mokelumne River Project;

(c) A water right decision concerning the parties (diverters) responsible for meeting the new water quality standards for the Bay Delta Estuary;

(d) And other applicable issues described in this scoping letter.

Disclose the above mentioned proposed decisions in the Draft EIR.

What Agencies and Projects Will Makeup the Flow Deficit to the Bay Delta Pool as a Result of the Proposed Project

27. The Draft EIR should disclose what agencies and projects will be required to makeup the deficit of up to 150,000 acre-feet of American River water to the Bay Delta Pool. The Draft EIR should disclose what compensation EBMUD will provide to the agencies and projects which makeup for the deficit of up to 150,000 acre-feet of water diverted as a result of the proposed project.

El Dorado Water Agency and El Dorado Irrigation District Proposed Diversion of Water From Folsom Reservoir

28. The Draft EIR should disclose and evaluate the cumulative impacts to CVP water and areas of origin water as a result of the proposed Folsom South Canal Connection Project and the proposed diversion of 17,000 acre-feet of water from Folsom Reservoir by the El Dorado Water Agency and the El Dorado Irrigation District.

USBR Use of EBMUD's Contract Water

29. In 1970, EBMUD entered into a 40 year contract with the USBR for an annual delivery of up to 150,000 acre-feet of CVP water. The Draft EIR should disclose and evaluate how the USBR has used the EBMUD CVP contract water during the period from 1970 to 1996 (pre-project). The Draft EIR should disclose the annual periods when EBMUD contract water was

released from Folsom Reservoir to protect the environmental needs of the lower American River, to meet D-1485 water quality standards, and to meet CVP contracts south of the Delta.

It appears that the USBR may have lost its water rights to convey CVP water to EBMUD for the proposed project because EBMUD failed to beneficially use the CVP contract water since 1970. Consequently, said water may have reverted back to the public subject to appropriation. We refer you to Section 1241 of the California Water Code. Disclose and discuss this issue in the Draft EIR.

Proposed Auburn Dam Project

30. The proposed Auburn Dam Project has the potential to be approved by Congress. The Draft EIR should disclose whether EBMUD would retain any CVP water rights and/or CVP contract entitlements from the Auburn Dam Project.

Cumulative Impacts - CEQA

31. The duty to evaluate adverse environmental impacts does not depend upon a showing by the public [CSPA], or even other public agencies, that there will be impacts. The project proponent [EBMUD] must present substantial evidence from which a reasoned conclusion may be reached that there will not be significant adverse impacts. We reference Laurel Heights, supra 47 Cal 3d. at 405-406. The duty to provide evidence rests with the lead agency [EBMUD], and not with the public [CSPA]. Sundstrom v. County of Mendocino (1988) 202 Cal.App.3d 296, 304-305 Section 21002, Section 21080.5(d) (2) (1).

The burden is not shifted at the administrative level to those [CSPA] challenging a project to present evidence of adverse impacts before the agency [EBMUD] can be required to assess whether such impacts exists. The failure to assemble adequate information for a meaningfully environmental review cannot be used to justify a finding of no significant impact. We reference Sundstrom v. County of Mendocino, supra, 202 Cal.App.3d at 311-312; Christward Ministry v. Superior Court (1986) 184 Cal.App.ed. 180, 197 and Laurel Heights, supra, 47 Cal.ed at 405. Otherwise, the agency [EBMUD] would be allowed to avoid an attack on the adequacy of the information simply by not requiring the submission of such information. We reference Kings County, supra, 221 Cal.App.ed at 723.

A draft EIR must discuss "cumulative impacts" when they are significant. (CEQA Guidelines, section 15130, subd. (a).) These are defined as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." (CEQA

Guidelines, section 15355; see also section 21083, subd. (b).) "Individual effects may be changes resulting from a single project or a number of separate projects." (CEQA Guidelines, section 15355, subd. (a).) "The cumulative impacts from several projects is the change in the environment which results from the incremental impact of the project when added to the closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." (CEQA Guidelines, section 15355, subd. (b).)

A legally adequate "cumulative impacts analysis" thus is an analysis of a particular project viewed over time and in conjunction with other related past, present, and reasonably foreseeable probable projects whose impacts might compound or interrelate with those of the project at hand. Such an analysis "assess cumulative damage as a whole greater than the sum of its parts." (Environmental Protection Information Center v. Johnson (1st Dist. 1985) 170 Cal.App.3d 604, 625 [216 Cal.Rptr. 502].) Such an analysis is necessary because [t]he full environmental impact of a proposed.... action cannot be gauged in a vacuum." (Whitman v. Board of Supervisors (2d Dist. 1979) 88 Cal.App.3d 397, 408 [15] Cal.Rptr. 866), quoting Akers v. Resor (W.D. Tenn. 1978) 443 F.Supp. 1355, 1360.) " [A]n agency may not....[treat] a project as an isolated 'single shot' venture in the face of persuasive evidence that it is but one of several substantially similar operations....To ignore the prospective cumulative harm under such circumstances could be to risk ecological disaster." (Whitman, supra, 88 Cal.App.3d at 408 [151] Cal.Rptr. 866], quoting Natural Resources Defense Council v. Callaway (2d Cir. 1975) 524 F.2d 79, 88.)

Unless cumulative impacts are analyzed, agencies tend to commit resources to a course of action before understanding its long-term impacts. Thus, a proper cumulative impact analysis must be prepared "before a project gains irreversible momentum." (City of Antioch v. City Council (1st Dist. 1986) 187 Cal.App.3d 1325, 1333 [232 Cal. Rptr. 507], citing Bozung v. Local Agency Formation Commission (1975) 13 Cal.3d 263, 282 [118 Cal.Rptr. 249].)

One court has described as follows the danger of approving projects without first preparing adequate cumulative impact analyses:

"The purpose of this requirement is obvious: consideration of the effects of a project or projects as if no other existed would encourage the piecemeal approval of several projects that taken together, could overwhelm the natural environment and disastrously overburden the man-made infrastructure and vital community services. This would

effectively defeat CEQA's mandate to review the actual effect of the project upon the environment." (Las Virgenes Homeowners Federation, Inc. v. County of Los Angeles (2d Dist. 1986) 177 Cal.App.3d 300, 306 [223 Cal.Rptr. 18].)

Like every aspect of CEQA, "[t]he requirement for a cumulative impact analysis must be interpreted so as to afford the fullest possible protection of the environment within the reasonable scope of the statutory and regulatory language." (Citizens to Preserve the Ojai v. Board of Supervisors (2d Dist. 1985) 176 Cal.App.3d 421, 431-432 [222 Cal.Rptr. 247], citing Friends of Mammoth v. Board of Supervisors (1972) 8 Cal.3d 247, 259 [104 Cal.Rptr. 761].) In Citizens to Preserve the Ojai, the Court explained:

"[I]t is vitally important that an EIR avoid minimizing the cumulative impacts. Rather, it must reflect a conscientious effort to provide public agencies and the general public with adequate and relevant detailed information about them. A cumulative impact analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decisionmaker's perspective concerning the environmental consequences of a project, the necessity for mitigation measures, and the appropriateness of project approval. An inadequate cumulative impact analysis does not demonstrate to an apprehensive citizenry that the governmental decisionmaker has in fact fully analyzed and considered the environmental consequences of its action." (176 Cal.App.3d at 431 [222 Cal.Rptr.247]. quoting San Franciscans for Reasonable Growth v. City and County of San Francisco ("SFRG 1") (1st Dist. 1984) 151 Cal.App.3d 61,79[198 Cal.Rptr. 634].)

"Past, present, and reasonably future projects" include not only projects under construction, but also related "unapproved project currently under environmental review". Some project may be "reasonably foreseeable" even though they may never be built and approved. The Initial Study should disclose and evaluate the cumulative impacts to the environment from the proposed project, existing projects and future projects. What matters is whether they [projects] appear foreseeable at the time of EIR preparation. We reference CEQA Guidelines Section 15130. (City of Antioch v. City Council (1st Dist. 1986) 187 Cal.App.3d 1325, 1333 [232 Cal. Rptr. 507].); see also Mountain Lion Coalition v. California Fish and Game Commission (1st Dist. 1989) 214 Cal.App.3d 1043, 1048, 1050 [263 Cal.Rptr. 104].)

By far the most important recent case on cumulative impacts is Kings County Farm Bureau et al. v. City of Hanford (5th Dist. 1990) 221 Cal. App. 3d 692; 222 Cal. App. 3d 516a

[270 Cal. Rptr. 650] The Court of Appeal held inadequate the cumulative impact analysis prepared for an EIR for a proposed coal-fired cogeneration power plant. The EIR's approach to assessing the significance of cumulative air quality impacts was based on a misunderstanding of the applicable legal requirements.

We want to make it very clear to EBMUD that we expect that all cumulative impacts as noted in this scoping letter and other that may be present are evaluated in the Draft EIR for the proposed project.

EDMUD Reference Reports - Draft EIR

32. According to the Initial Study, EDMUD will reference other reports prepared in evaluating potential direct, indirect, and cumulative impacts to public trust resources as a result of the proposed project. Not every interest parties providing comments to EBMUD regarding the NOP and Draft EIR may not have copies of said reports. Secondly, new information is available since the reports were prepared. Consequently, we believe that EBMUD should disclose, describe, and include all evaluations and analyzes in the Draft EIR so that all reader of the Draft and Final EIR have the necessary information to review the environmental document and make conclusions.

Please forward a copy of the Draft EIR to me at the address listed below so that we can provide comments to you regarding the contents of the Draft EIR.

Respectfully Submitted



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